HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITION No.6912 OF 2003

Dated 01-02-2006

Between :

M/s. Suryachakra Sea Foods Limited, a Public Limited Company, represented by its Director, T. Bhaskar Rao, son of T. Appa Rao, aged 60 years, Occupation : Director, resident of Hyderabad.

….Petitioner.

And :

1. The District Collector, East Godavari, Kakinada and others.

…Respondents.

ORDER :

This writ petition has been filed by M/s. Suryachakra Sea Foods Limited, a Public Limited Company, represented by its Director, assailing the proceedings dated 15.3.2003 issued by the Revenue Divisional Officer, Amalapuram Revenue Division, East Godavari District whereunder the request of the petitioner Company for alienation of the lands has been rejected.

2. The petitioner is a company registered under the Companies Act. It acquired large extent of land for cultivation of prawn and fish culture. It also purchased the assigned lands from the assignees. It made a representation to the Government in the year 1991 through the aegis of the A.P. Industrial Infrastructure Corporation Limited-4th respondent to allot the lands that are purchased from the assignees by taking necessary steps for cancellation of assignments. The petitioner filed W.P.No.21672 of 1995 assailing the inaction of the respondents on the application filed by it for allotment of the lands. The said writ petition came to be disposed of on 27-09-1995 directing the respondents to consider the case of the petitioner for allotment of lands in Survey Nos. 592 and 593 in Bhairavalanka village and pass appropriate orders

thereon. The petitioner also filed W.P.No.22947 of 1996 apprehending dispossession and the said writ petition came to be disposed on 01-11-1996 directing the respondents not to dispossess the petitioner from the lands in question until they pass appropriate orders as directed by this Court in Judgment dated 27-9-2005 in W.P.No.21672 of 1995. The Revenue Divisional Officer, Amalapuram-2nd respondent conducted an enquiry on the application submitted by the petitioner Company and rejected the request of the petitioner for allotment of the assigned lands. The relevant portion of the order dated 15-3-2003 passed by the Revenue Divisional Officer, Amalapuram-2nd respondent reads as follows :

> "Against the orders of the Collector, Kakinada dt.17-10-96 and notice dt.24-10-96 of the M.R.O., I. Polavaram, M/s Surya Chakra Sea Foods Ltd., and M/s Kalyani Sea Foods Limited have filed Writ Petition No.22947 of 1996 in the Hon'ble High Court of Andhra Pradesh and the Hon'ble Court disposed the Writ Petition on 01-11-96 as follows :
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> "In the circumstances, I direct that the petitioner No.1 (M/s Surya Chakra Sea Foods Ltd.,) shall not be dispossessed from the lands in question until the respondents (1. APIIC, 2. Collector, Kakinada 3. M.R.O., I. Polavaram) pass appropriate orders as directed by this Court in judgment dt.27-09-95 in W.P.No.21672 of 1995".
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> The Hon'ble Supreme Court of India has issued orders on 24-08-95 imposing a ban on allotment of land for aqua culture.
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> In view of the orders of the Supreme Court of India, it is not possible for allotment of the lands in S.No.592 and 593 in Bhyravalanka h/o Guthenadeevi village of I. Polavaram Mandal to M/s Surya Chakra Sea Foods Ltd., for prawn culture. More over the ceiling surplus land should be utilized for agriculture and house sites purpose only as per A.P. Land Reforms (C.O.A.H) Act, 1973. Hence, the request of M/s Surya Chakra Sea Foods Ltd., for alienation of the lands in S.No.592 and 593 in Bhyravalanka h/o Guthinadeevi village of I. Polavaram Mandal is hereby rejected.
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> The writ petitioner M/s Suryachakra Sea Foods Ltd., filed a suit in O.S.No.66/94 on the file of the Senior Civil Judge's Court, Amalapuram against the Collector, E.G. District, Kakinada; Revenue Divisional Officer, Amalapuram; and the Mandal Revenue Officer, I. Polavaram. The suit is filed (a) to declare right, title and possession of plaintiff in the plaint schedule property (b) to grant consequential permanent injunction restraining the defendants from interfering with the possession of plaint schedule property in R.S.No.593 of Guthinadeevi village of I. Polavaram Mandal. The O.S.No.66/94 is still pending in Senior Civil Judge's Court, Amalapuram. The Assistant Government Pleader, Amalapuram in the reference 3rd cited above has opined that it is not proper to take possession of the suit schedule properties from the plaintiff i.e., M/s Surya Chakra Sea Foods Ltd., until the suit is disposed off.
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> In view of the above, the Mandal Revenue Officer, I. Polavaram is directed to take possession of the following assigned lands and Forest lands from M/s

Surya Chakra Sea Foods Ltd., and M/s Kalyani Sea Foods Ltd., immediately and submit report.

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handed over to the Chief Executive Officer, Brakish Water Fish Forum Development Agency, Kakinada. Questioning the same, the petitioner-company filed Writ petition No.22947/1996 and this Court by an order dated 01-11-1996 directed the respondents not to dispossess the petitioner-company from the lands in question until the respondents pass appropriate orders as directed by this Court in judgment dt.27-9-1995. It is further stated in the counter-affidavit that pursuant to the orders in the writ petition No.22947 of 1996,
dt.1-11-1996, the District Revenue Officer, Kakinada vide letter No.L5/12140/93, dated 7-1-1997 has directed the 2nd respondent to pass necessary orders in accordance with law. The 2nd respondent viz., the Revenue Divisional Officer, Amalapuram Division vide proceedings No.H/2560/94, dt.15-3-2003 has rejected the request of the petitioner for alienation of lands in S.No.592 and 593 of Bhyravalanka h/o Guthinadeevi village keeping in view the orders of the Hon'ble Supreme Court in W.P. (Civil) No.561/1994,
dt.24-08-1995.

4. It is specifically asserted by the respondents 1 to 3 in the counter-affidavit, that an extent of Ac.210 in S.No.593, situated at Bhyravalanka h/o Guthinadeevi, I. Polavaram Mandal, East Godavari District is a Government land as per Settlement Register. The Government has taken possession of Ac.92.00 in R.S.No.592 as surplus land and assigned the same to the landless poor. Similarly out of 210.00 acres in R.S.No.593, the surplus land is Ac.118-43 cents and the same has been assigned to the landless poor. The land in R.S.No.716 (Ac.44-60) is classified as Forest Land and the same can not be alienated in favour of the petitioner.

5. The Counter affidavit of the 4th respondent in brief, is that the Corporation initially requested the District Collector, East Godavari District, Kakinada on 27-5-93 for alienation of land to an extent of Acs.180-00 in Sy.No.593/part of Bhairavalanka village, I. Polavaram Revenue Mandal, East Godavari District for the establishment of prawn processing and cold storage unit. Subsequently, the Corporation withdrew its request and instead requested the District Collector, E.G. District on 2-3-94 for alienation of land in Sy.No.716/part of Bhairavalanka Hamlet of Guttenandeevi village, I. Polavaram Revenue Mandal, East Godavari District. On coming to know that the land in Sy.No.716/part is classified as forest land, the Corporation dropped the requisition made on 2-3-1994 for alienation. As such, the request of the petitioner/company for allotment of land to it by the Corporation could not be

considered and the amount of EMD of Rs..6.25 lakhs paid by the petitioner company has been refunded to it on 7.10.2003.

6. Heard the learned counsel for the petitioner and the learned Government Pleader for assignment appearing for the respondents 1 to 3 and the learned Standing Counsel appearing for the 4th respondent.

7. Learned counsel for the petitioner submitted that the decision of the Honourable Supreme Court referred by the Revenue Divisional Officer in the order impugned in the writ petition is not applicable to the facts of the case. He further submits that the Government having issued a memo No.38668/ASN dated 27-06-1994 is not justified in rejecting the application of the petitioner for alienation of the land in its possession. A further submission has been that since the land in question is not occupied by the Government, there cannot be any impediment to the Government to alienate the said land to the petitioner Company.

8. Learned Government Pleader for Assignment appearing on behalf of the respondents 1 to 3 submitted that a part of the land is a forest land and therefore, the question of assigning the said land to the petitioner-company is impermissible. Since the other lands being agricultural lands, they can not be assigned to non-agriculture purpose.

9. During the course of his arguments, the learned Government Pleader for Assignment refers to Section 2 (1) and (6) and section 3 of the A.P. Assigned Lands Prohibition of Transfer Act, 1977. Undisputedly, survey No.592 and 593 are the surplus lands which have been assigned to the landless poor under the provisions of the Land Reforms Act. The purpose for which the petitioner sought for assignment of the land is non-agricultural purpose.

10. In that view of the matter, no mandamus or direction can be issued to the respondents to consider the application of the petitioner for alienation of the lands for non-agricultural purpose. The Revenue Divisional Officer, considered the material brought on record in a right perspective and rejected the request of the petitioner, Hence, I do not see any flaw in the order passed by the Revenue Divisional Officer warranting interference of this Court in exercise of powers by invoking jurisdiction under section 226 of the Constitution of India.

11. Accordingly, the writ petition is dismissed. No costs.

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Justice B. Seshasayana Reddy

Dated 01-02-2006

Dvs

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